

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 2235 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

HARSHADKUMAR CHHOTALAL DUDHIA

Versus

JAVANJI MADHAJI THAKOR

Appearance:

MR MB GANDHI for Petitioner

MR IM BENGALI for Respondent No. 1

MR KISHOR PRAJAPATI for Respondent No. 16,17,18,19,20,21

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE J.R.VORA

Date of decision: 05/04/99

ORAL JUDGEMENT : [Per: Dave, J.]

1. This motion of contempt has been moved by the petitioner Shri Harshadkumar Dudhia. The grievance made

by the petitioner while moving this contempt motion, which has been already admitted and the Rule has been given, is that the decree pronounced by the learned Civil Judge (SD), Kalol, in RCS No. 225 of 1993 has not been complied with and that there has been a wilful disobedience of the above said decree.

2. Decree pronounced by the trial court would go to show that in fact the dispute was in respect of the 2/3 portion of a particular land. It is not in dispute that the dispute was limited to the above said portion of 2/3 land only because 1/3 of the land which would remain came to be transferred in the name of the plaintiff and, therefore, the petitioner plaintiff was suing for a decree for specific performance in respect of the remaining 2/3 portion of the land. The decree shows that the suit came to be decreed and the defendants were directed to execute the sale deed in favour of the plaintiff qua the remaining 2/3 portion of the land. As usual, it has been said that if per chance the defendants fail to do so, it shall be open for the plaintiff to get the decree executed through the Court Commissioner. It has also been said in the decree that meanwhile the defendants stand restrained from transferring the property in dispute and the subject matter of the decree in any way whatsoever.

3. Now the grievance made by the petitioner the decree holder is that in violation of the second part of the decree, there has been a transfer effected by the original defendants in favour of some of the co-plaintiffs who have stepped in the shoes of the original plaintiff by way of succession. It is not in dispute that the petitioner has taken out the execution proceedings before the competent court and that they are pending.

4. Looking to the fact that the execution proceedings have been instituted and they are pending and further looking to the fact that the case of the petitioner is that there has been a transfer in favour of some of the co-plaintiffs, we are of the opinion that present proceedings require to be disposed of by saying that the aggrieved parties can have the appropriate remedy from the appropriate civil forum. We order accordingly. Rule shall stand discharged. No costs.

p.n.nair